bility. That liability arises from the character of the promise, and the interest in the principal contract and the benefit to be derived from it becomes a matter of consideration only as they may serve to determine that character. *Clay v. Walton*, 9 Cal. 328. The vital point in cases of this class is: Was the contract original? *Payne v. Baldwin*, 14 Barbour 570. In order that the promise may be held to be within the statute it is essential that there be a binding and subsisting obligation or liability to the promisee to which the promise is collateral. 151 Ill. 175. The evidence required to change a contract relation between a plaintiff and a third party and to prove a promise to pay the debt of another as a new and original undertaking and not a contract of suretyship, must be clear and satisfactory; otherwise it will fall within the statute. *Haverly v. Mercer*, 78 Pa. 257. A case directly in point is *Diringer v. Moyniham*, 10 N. Y. Supp. 540, which held that a promise by defendant to see that workmen of sub-contractor were paid was a promise to pay debt of another, and, not being in writing, was unenforceable.

CONTRIBUTORY NEGLIGENCE—QUESTIONS FOR JURY.—CRAUCH VS. BROOKLYN HEIGHTS Ry. Co., 129 N. Y. ST. REP. 169.—Plaintiff was injured at a grade crossing while proceeding to defendants' station—*Held*, that the fact that the plaintiff had seen a train approaching and had not waited to see if train would stop at the station, was not, under all circumstances, negligence in law.

It is established universally and beyond a doubt that negligence and contributory negligence are questions of fact for the jury, except in rare cases. *Burns v. Town of Elba*, 32 Wis. 605; *Balt. & Ohio R. R. Co. v. Shipley*, 31 Md. 370. That there are exceptional cases is unquestioned. *Tyson v. Tyson*, 37 Md. 567-581; *Balt. & Ohio R. R. Co. v. Fitzpatrick*, 35 Md. 32. But there is hopeless conflict on these cases. Compare the following: *Butler v. R. R. Co.*, 126 Pa. St. 160; *Lewis v. Balt. & Ohio R. R. Co.*, 38 Md. 588; *Brown v. Barnes*, 151 Pa. St. 562; *Moore v. Westervelt*, 21 N. Y. 103. In some states the question is controlled by the fact that the burden of showing ordinary care is put on the plaintiff. *Alger v. City of Lowell*, 3 Allen 402; *Cramer vs. City of Burlington*, 42 Iowa, 315. But see *Bradwell v. Pittsburg & West End Ry. Co.*, 139 Pa. St. 404; *Brown v. Traction Co.*, 14 Pa. Sup. Ct. 594. For a case where there is no room for doubt see *Balt. City Pass. Ry. Co. v. Wilkinson*, 30 Md. 224.

CORPORATIONS—EMINENT DOMAIN—LEGALITY OF CORPORATE EXISTENCE.—EDDLEMAN ET UX. V. UNION COUNTY TRACTION & POWER CO., 75 N. E. 510 (ILL.). *Held*, that the legality of the existence of a corporation cannot be attacked in condemnation proceedings instituted by it, but only in a direct proceeding by *quo warranto*.

The better rule seems to be as announced in the opinion above. *W. & P. R. Co. v. C. & C. R. & L. Co.*, 114 N. C. 690; *Morrison v. Forman*, 161 Ill. 247; *Niemeyer v. Little Rock Junction Ry.*, 43 Ark. 111. But some courts hold that a *de jure* corporate existence must be shown when it is sought to take property by eminent domain. *In re Brooklyn W. & N. Ry. Co.*, 72 N. Y. 245; *Powers v. H. & L. Ry. Co.*, 33 Oh. St., 429; *Orrich School Dist. v. Dorton*, 125 Mo. 439. *De jure* corporate existence must be set up in actions by a corporation to collect subscriptions made prior to incorporation. *Indiana F. & M. Co. v. Herkimer*, 46 Ind. 142; *Schloss v. Montgomery Trade Co.* 87 Ala. 414. The subscriber may be estopped to attack the corporate existence if he participated in the formation of the corporation. *Bell's Appeal*,